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Dispute Settlement Body
29 August 2003

MINUTES OF MEETING

Held in the Centre William Rappard
on 29 August 2003

Chairman: Mr. Shotaro Oshima (Japan)

Prior to the adoption of the agenda, the item concerning the adoption of the Panel Report in the case on: "Japan – Measures Affecting the Importation of Apples" was removed from the proposed agenda following Japan's decision to appeal the Panel Report.

Subjects discussed: Page

1. Surveillance of implementation of recommendations adopted by the DSB

(a) United States – Anti-Dumping Act of 1916: Status report by the United States (WT/DS136/14/Add.18 - WT/DS162/17/Add.18)

(b) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.11)

(c) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.11)

(d) Egypt – Definitive anti-dumping measures on steel rebar from Turkey: Status report by Egypt (WT/DS211/7/Add.3)

1. The Chairman recalled that Article 21.6 of the DSU required that "unless the DSB decides otherwise, the issue of implementation of the recommendations or rulings shall be placed on the agenda of the DSB meeting after six months following the date of establishment of the reasonable period of time pursuant to paragraph 3 and shall remain on the DSB's agenda until the issue is resolved". He proposed that the four sub-items to which he had just referred be considered separately.

(a) United States – Anti-Dumping Act of 1916: Status report by the United States (WT/DS136/14/Add.18 - WT/DS162/17/Add.18)

2. The Chairman drew attention to document WT/DS136/14/Add.18 – WT/DS162/17/Add.18 which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning the US Anti-Dumping Act of 1916.

3. The representative of the United States said that his country had provided an additional status report in this dispute on 18 August 2003, in accordance with Article 21.6 of the DSU. As noted in the report, legislation repealing the 1916 Anti-Dumping Act and terminating all pending cases had been introduced in the US Senate on 19 May 2003. Other bills repealing the 1916 Act had been introduced in the House of Representatives on 4 March 2003, and in the Senate on 23 May 2003. The US

administration was continuing to work with the US Congress to achieve further progress in resolving this dispute with the EC and Japan.

4. The representative of the European Communities recalled that, at the arbitration hearing regarding the compliance deadline in the Byrd Amendment case, the United States had described itself as a "strong advocate of prompt compliance". However, Members were now approaching the third "anniversary" of the condemnation of the 1916 Anti-Dumping Act, but there was still no concrete move of the United States towards implementation. All that had been achieved in those three years was the introduction of 6 repealing bills. Three had become void after the last US Congress had adjourned in November 2002 without even discussing them. The other three were now pending in the new US Congress for several months without again being even discussed. Moreover, several of the bills pending before the US Congress only envisaged to repeal the 1916 Anti-Dumping Act without terminating the pending litigation. The US failure to abide by its compliance duty had led to the situation where, in three instances, EC companies were bearing substantial litigation costs to defend themselves against the application of a law condemned almost three years ago. He recalled that the EC had accepted to extend the implementation deadline and to suspend the arbitration on its request for retaliation on the express understanding that the repealing Act would also terminate the pending litigation. However, given the persisting situation of non-compliance, the EC had no other option than to exercise its WTO rights and would proceed forthwith to resume the above-mentioned arbitration.

5. The representative of Japan said that her country greatly regretted that the United States had failed to implement the DSB's recommendations and rulings before the summer recess of the first session of the 108th Congress, despite Japan's repeated calls to do so. Compliance by the United States at an earliest possible time was imperative not only for solving this dispute, but also for preserving the credibility of the WTO dispute settlement system. Therefore, Japan strongly urged the United States to make every effort to implement the DSB's recommendations and rulings by passing the necessary legislation immediately after the session resumed. Japan reiterated that, among the bills introduced to the Congress, those with proper retroactive effect had to be passed. Termination of the pending cases with the retroactive effect was critical since the relevant Japanese companies had been forced into the proceedings under this WTO-inconsistent Act and had been suffering substantial damages, including significant legal costs. Japan expected the United States to report to the DSB on the status of all the repealing bills introduced to the Congress, and to describe in more detail how the United States planed to ensure the earliest passage of the repealing bills with the proper retroactive effect. In view of the statement made by the EC at the 21 and 23 July DSB meeting as well as at the present meeting, Japan would further contemplate what action it might take, since it too had the right to suspend concessions or other obligations.

6. The representative of the United States said that his country regretted that the EC had decided to request the resumption of the arbitration in this dispute. As he had already indicated, the US administration would continue to work with the US Congress to resolve this dispute.

7. The DSB took note of the statements and agreed to revert to this matter at its next regular meeting.

(b) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.11)

8. The Chairman drew attention to document WT/DS176/11/Add.11 which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US Section 211 Omnibus Appropriations Act of 1998.

9. The representative of the United States said that his country had provided a status report in this dispute on 18 August 2003, in accordance with Article 21.6 of the DSU. The US administration

continued to work with the US Congress with respect to appropriate statutory measures that would resolve this matter.

10. The representative of the European Communities said that the introduction of a bill to repeal Section 211 in June 2003 was a positive move towards implementation. This bill would not only remove a damaging special interest legislation. It would also provide a whole scheme of measures that would ensure an effective protection of intellectual property rights. This reaffirmed the US attachment to ensure adequate protection of intellectual property rights. The EC hoped that this would offer the opportunity to solve this dispute to the benefit of all.

11. The representative of Cuba said that, as indicated in the status report submitted by the United States, a bill was pending approval in the US House of Representatives that would repeal Section 211. Cuba hoped that a decision on this matter would be taken as soon as possible.

12. The DSB took note of the statements and agreed to revert to this matter at its next regular meeting.

(c) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.11)

13. The Chairman drew attention to document WT/DS184/15/Add.11 which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US anti-dumping measures on certain hot-rolled steel products from Japan.

14. The representative of the United States said that his country had provided a status report in this dispute on 18 August 2003, in accordance with Article 21.6 of the DSU. The US administration continued to work with the US Congress to address the DSB's recommendations and rulings that had not been addressed by the original deadline of 23 November 2002, and had supported specific legislative amendments that would do so. The US administration was working for passage of these amendments.

15. The representative of Japan said that it was regrettable that the United States had not implemented the DSB's recommendations and rulings before the summer recess of the first session of the 108th Congress. The protracted failure by the United States to meet its obligation was undermining the confidence in the effectiveness of the WTO dispute settlement system. The United States must do its best to restore the confidence by promptly implementing the DSB's recommendations and rulings in this proceeding. Although the United States claimed that the US administration had expressed its support for the legislative action to be taken, no bills had been introduced to the US Congress even more than four months after the joint letter by Ambassador Zoellick and Secretary Evans. The United States did not seem to appreciate at all Japan's legitimate concern. Japan demanded the US administration to work more intensively with the Congress so that bills amending the relevant US statutes had been introduced and passed at an earliest stage of the first session of the 108th Congress once it resumed. Her country also expected that the United States would consult closely with Japan on the status and contents of the implementation.

16. The DSB took note of the statements and agreed to revert to this matter at its next regular meeting.

(d) Egypt – Definitive anti-dumping measures on steel rebar from Turkey: Status report by Egypt (WT/DS211/7/Add.3)

17. The Chairman drew attention to document WT/DS211/7/Add.3, which contained the status report by Egypt on progress in the implementation of the DSB's recommendations in the case concerning definitive anti-dumping measures on steel rebar from Turkey.

18. The representative of Egypt said that his delegation wished to inform the DSB that Egypt's investigating authorities had submitted on 30 July 2003 the final report to the Turkish authorities; i.e. within the reasonable period of time determined upon agreement with Turkey, pursuant to Article 21.3 of the DSU. The final report reflected faithfully, and in a proper manner, the implementation of all the recommendations of the Panel taking into account the comments of all the interested parties. By submitting this final report in due time, Egypt was in a position to declare at the present meeting its full compliance with the DSB's recommendations. Consequently, Egypt would no longer be required to provide any further status report regarding this matter.

19. The representative of Turkey said that his Government and the companies concerned had received the Egyptian authorities' revised assessment of dumping and injury. After a careful review of the revised calculation of dumping margins for the two companies in question, Turkey had submitted, orally and in writing, its comments about the calculation methodology employed and the calculation itself made by the Egyptian authorities. However, the Egyptian authorities had not given positive consideration to those comments. Turkey was of the view that Egypt, in revising its implementation to bring its measure in line with the Panel's recommendation had made some material errors. Therefore, Turkey, even though appreciated the improvement on the duties imposed on exports of the two companies within the reasonable period of time, could not agree that the solution proposed by Egypt was sufficient to meet the Panel's recommendations and was mutually agreeable. However, for the sake of further improving its trade relations with Egypt, Turkey had decided neither to take the issue to a compliance panel nor to maintain it rights under Article 22.6 of the DSU as an indication of its goodwill. In conclusion, Turkey did not have any objection that the matter should no longer appear on the agenda of future DSB meetings.

20. The representative of Mexico said that his delegation wished to put on record its deep concern about the systemic problems in the area of implementation and the need to discuss seriously and substantively the changes in this area.

21. The DSB took note of the statements.

2. Australia – Certain measures affecting the importation of fresh fruit and vegetables

(a) Request for the establishment of a panel by the Philippines (WT/DS270/5/Rev.1)

22. The Chairman recalled that the DSB had considered this matter at its meeting on 21 and 23 July 2003 and had agreed to revert to it. He drew attention to the communication from the Philippines contained in document WT/DS270/5/Rev.1.

23. The representative of the Philippines said that, as mentioned in the statement made at the DSB meeting when the Philippines' request for establishment of a panel was considered for the first time, the Philippines had consistently raised concerns about Australia's import measures, in particular on fresh fruits and vegetables, including fresh bananas, plantains and fresh papayas. These measures imposed by Australia had, for a long time, effectively prevented access of Philippines' exporters of these products into the Australian market. Despite continued and persistent efforts, including bilateral discussions and exchanges of information, the above-mentioned products continued to face unreasonable restrictions.

24. Hence, in accordance with Article 4 of the DSU, the Philippines had requested consultations with Australia to discuss these as well as other related issues and concerns. The consultations had been held between the Philippines and Australia on 15 November 2002. Unfortunately, however, these consultations had failed to resolve the dispute and the Philippines was obliged to make the request for the establishment of a panel for the second time. Hence, at the DSB meeting on 21 and 23 July 2003, the Philippines had requested the establishment of a panel, in accordance with Article 6 of the DSU. Since Australia had exercised its right under Article 6 of the DSU at the above-

mentioned meeting, the Philippines was now making its request for the establishment of a panel for the second time. Like Australia, the Philippines believed that these concerns could be appropriately resolved through bilateral initiatives and mechanisms. The Philippines had hoped and continued to hope that Australia would avail itself of the parties' respective openness to such opportunities. Unlike Australia, however, the Philippines did not think that Australia's characterization of the Philippines' legal challenge as "a broad systemic challenge to Australia's quarantine regime that strikes at the fundamental right of WTO Members to have quarantine systems" was complete and accurate. From the Philippines' perspective, its challenge was focused on, among other things, the WTO-consistency of Australia's quarantine regime which prohibited as a general rule the entry of fresh fruits and vegetables. To its mind, Australia's regime subverted fundamental principles enshrined in the various WTO Agreements in a unique way which did not appear to be replicated in any other Member's import regime. Furthermore, other elements specific only to Australia's import regime elicited the sense on its part that its regime was distinct from those of other WTO Members as to preclude any suggestion at all that other "WTO Members maintain approaches to quarantine which are either similar to Australia's system, or have similar elements". Therefore, while the Philippines expected that other WTO Members would share serious concerns about the implications of its challenge, it believed that such concerns would be more in line with questioning whether an import regime which prohibited "a priori" any entry of fresh fruits and vegetables could be characterized as a fundamental right of WTO Members or even as an appropriate quarantine regime. Other concerns mentioned by Australia in the consultations and at the previous DSB meeting similarly appeared to be legal issues which could only be resolved at the Panel's proceedings themselves. Hence, the Philippines would refrain from offering further comments on these matters at this point in time.

25. The representative of Australia said that his country was disappointed with the Philippines' decision to proceed with its request for a panel, an action which was both unnecessary and unproductive for all concerned. Australia considered its measures to be fully WTO-consistent, and was confident that a panel would so agree. Although Australia understood the Philippines intended to persist with its request for panel establishment at this meeting, it considered that the Philippines' concerns could be addressed more constructively through bilateral mechanisms and remained open to further consultations. As mentioned at the 21 and 23 July DSB meeting, Australia had serious concerns, which it expected would also be shared by other Members, about the approach taken by the Philippines in framing its panel request. The Philippines appeared to be interested in making a broad systemic challenge to Australia's quarantine regime, rather than contesting the WTO-consistency of import conditions contained in specific SPS measures. If permitted, this sort of broad open-ended challenge would strike at the fundamental right of WTO Members to have quarantine regimes which provided for the application of WTO-consistent measures necessary for the protection of human, animal or plant life or health within their territory. The Philippines' complaint was a direct challenge to the carefully negotiated balance reflected in the SPS Agreement between WTO Members' shared, but sometimes competing interests in the promotion of trade and the protection of human, animal or plant life or health. Contrary to the claim made by the Philippines, many WTO Members maintained approaches to quarantine which were either similar to Australia's system or had elements that were similar to its import permit system. Australia expected they would share its serious concerns about the potential implications of the Philippines' challenge on the fundamental right of WTO Members to address their legitimate quarantine concerns. As mentioned previously, Australia had strong doubts about the consistency of the Philippines' request with the requirements of Article 6.2 of the DSU and reserved its WTO rights fully in this regard.

26. The DSB took note of the statements and agreed to establish a panel in accordance with the provisions of Article 6 of the DSU with standard terms of reference.

27. The representatives of China, EC, Ecuador, India, Thailand and the United States reserved their third-party rights to participate in the Panel's proceedings.

3. European Communities – Export subsidies on sugar

(a) Request for the establishment of a panel by Australia (WT/DS265/21)

(b) Request for the establishment of a panel by Brazil (WT/DS266/21)

(c) Request for the establishment of a panel by Thailand (WT/DS283/2)

28. The Chairman proposed that the three sub-items to which he had just referred be considered together. He recalled that the DSB had considered these matters at its meeting on 21 and 23 July 2003 and had agreed to revert to them. First, he drew attention to the communication from Australia contained in document WT/DS265/21.

29. The representative of Australia said that his country was making a second request for the establishment of a panel in this dispute at the present meeting. Australia's position on the issues raised in this dispute was set out in the panel request (document WT/DS265/21) and in its statement at the time of the first panel request on 21 July 2003. Therefore, at the present meeting, he would not go into details again, but he would like to reiterate two key points: first, Australia remained extremely concerned at the high levels of export subsidies on sugar being provided by the EC. The EC, despite being one of the highest cost producers in the world, exported approximately 6 million tonnes of subsidized sugar, an amount which significantly exceeded the EC's export subsidy obligations. This caused great damage to other sugar producing countries, including Australia. In taking this dispute, Australia was asking the EC to adhere to the commitments made at the time of the Uruguay Round, which had been hard won by countries such as Australia. Second, he also wished to reiterate that the dispute was not about preferential access by ACP countries to the EC. It was not within Australia's gift to deliver on the EC's treaty obligations to ACP countries. Australia, therefore, requested the DSB to establish a panel pursuant to Article 6 of the DSU to examine the matters set out in document WT/DS265/21. Australia also submitted that under Article 9.1 of the DSU a single panel be established to consider the matters raised by Australia, Brazil and Thailand.

30. The Chairman drew attention to the communication from Brazil contained in document WT/DS266/21.

31. The representative of Brazil said that this was the second time that Brazil was requesting the establishment of a panel to examine the EC's sugar regime; i.e. the "Common Organization of the Markets in the Sugar Sector". As Brazil had stated at the DSB meeting held on 21 July, this regime was characterized by import quotas, high tariffs, high domestic intervention prices and export subsidies. It grossly distorted world trade in sugar. At the present meeting, he wished to briefly point out again the main concerns raised by Brazil regarding the COM for sugar. First, the payments on the so-called C sugar enabled it to be produced and exported at prices below its total cost of production. These payments were financed by virtue of the high prices that the EC's regime secured for growers and processors of A and B sugar quotas. They were export subsidies within the meaning of Article 9 of the Agreement on Agriculture, and were subject to reduction commitments. Second, the export subsidies that the EC provided to an amount of white sugar was ostensibly equivalent to the quantity of raw sugar that it imported under its preferential import arrangements. This amount was reported by the EC to be approximately 1.6 million tonnes annually. The EC had unjustifiably excluded these subsidies from the calculation of the total amount of export subsidies that it provided for sugar.

32. He reiterated that this latter challenge was totally unrelated to the preferential arrangements that applied to the EC's imports of sugar from the ACP countries. Brazil supported and continued to support the waiver concerning the "ACP-EC Partnership Agreement". In fact, Brazil's request for the establishment of the panel contained no claims of violation concerning the access of ACP sugar to the EC's market. Brazil had tried to resolve these difficulties in consultations with the EC held on 21 and 22 November 2002. These consultations had been held with a view to resolving the dispute.

Unfortunately, they had failed to lead to a mutually satisfactory solution to this case. Thus, Brazil, together with Australia and Thailand, had no alternative but to request, for the second time, the establishment of a panel. Brazil, therefore, drew Members' attention to document WT/DS266/21 of 9 July 2003, which contained the request for the establishment of a panel to examine the conformity of certain aspects of the EC's sugar regime with the WTO rules. Brazil also submitted that under Article 9.1 of the DSU a single panel should be established to consider the matters raised by Australia, Brazil and Thailand.

33. The Chairman drew attention to the communication from Thailand contained in document WT/DS283/2.

34. The representative of Thailand said that at the DSB meeting on 21 and 23 July 2003, Thailand had requested that a panel be established to examine the matter set out in its request for the establishment of a panel contained in document WT/DS283/2. On the same day, Australia and Brazil had also asked the DSB to establish panels to address similar complaints. The EC had objected to the establishment of those panels. Since then, Thailand and the EC had been unable to reach a mutually agreeable solution. Accordingly, Thailand requested that the DSB establish a panel to examine the matter set out in document WT/DS283/2. As stated at the previous DSB meeting, Thailand had significant trade interests in the sugar sector. Together with Australia and Brazil, Thailand was among the world's most competitive exporters of sugar: Thailand's share of world white sugar exports was about 6 percent of total exports. Thailand's national development depended mainly on exports, of which sugar exports formed an essential component. The sugar industry employed almost 1.5 million workers. It was Thailand's goal to boost the incomes received by sugar producers.

35. The subsidies granted by the EC to its sugar exports were an impediment to Thailand's development of its sugar sector. It was well-documented that the EC routinely produced more sugar than it could consume. Under the EC's regime, sugar in excess of requirements had to be exported. Thailand submitted that it was profitable for EC sugar exporters to export this sugar because they benefited from illegal and WTO-inconsistent export subsidies provided by the EC. As well as having the substantial interest in the sugar sector, Thailand as a WTO Member had a systemic interest in the observance of WTO rules, and was concerned about an appropriate interpretation of the WTO's subsidy disciplines. Thailand was particularly concerned about the use that developed countries appeared to be making of export subsidy schemes that encouraged production in excess of domestic consumption, and guaranteed the exports of excess production. Thailand was concerned that such practices circumvented WTO rules, and had resulted in situations where exports from developing countries were not able to compete with subsidized exports from developed countries. Thailand, therefore, had both substantial trade and systemic interests in the EC's sugar regime. In conclusion, Thailand wished to endorse the statements made by Australia and Brazil, who had joined Thailand in requesting that panels be established to consider claims relating to the EC's sugar regime. Thailand wished to confirm that although the three requests presented to the DSB at the present meeting had been differently worded, the three WTO Members, Australia, Brazil and Thailand, had made substantially the same claims. Thailand, therefore, joined Brazil and Australia in requesting that the DSB establish a single panel to consider the matters raised in those requests.

36. The representative of the European Communities said that the EC had already indicated its views on this matter and would not repeat them at the present meeting. Australia, Brazil and Thailand had chosen to ignore the EC's arguments and remained insensitive to the legitimate concerns strongly voiced by the ACP and LDC's sugar exporting countries. This was deeply regrettable, but the EC would vigorously defend its interest and those of the ACP and LDC's beneficiaries of the sugar regime in this dispute. He said that the EC could agree to the establishment of a single panel, referred to by Australia, Brazil and Thailand to examine their complaints.

37. The representative of Australia said that, once again, claims had been expressed at the present meeting by the EC that the parties were insensitive to the concerns of ACP countries and that this

dispute was a de facto attack on ACP countries' preferential access to the EC's market. As it had been set out when Australia had first presented its request for establishment of a panel to examine the EC's export subsidies on sugar, it was clear from Australia's panel request that it honoured the assurances it had given to ACP countries that it would not challenge the preferential arrangements in this dispute. There is no reason why, in the event of a WTO finding against the EC, the preferences currently accorded to ACP countries by the EC could not continue to be honoured by the EC. Yet comments continued to be made such as these by the EC at the present meeting. Australia was left wondering once again why the EC did not settle this issue once and for all. He said that what was sought was an unambiguous undertaking that, in the event the WTO found against the EC on export subsidies, the EC would continue to honour its treaty obligations on preferential access to ACP countries. Surely the EC, if it was genuine, would be in a position to give that assurance right now. Failure by the EC to do so would confirm the view that this issue, while a critical one for ACP countries, was merely a smokescreen being used by the EC in the context of this dispute to deflect the debate from the central issue: i.e. the EC's failure to observe its export subsidy obligations in the sugar sector.

38. The DSB took note of the statements and agreed to establish a single panel pursuant to Article 9.1 of the DSU with standard terms of reference.

39. The representatives of Barbados, Canada, China, Colombia, Jamaica, Mauritius, New Zealand, Trinidad and Tobago and the United States reserved their third-party rights to participate in the Panel's proceedings.

4. United States – Anti-dumping measures on cement from Mexico

(a) Request for the establishment of a panel by Mexico (WT/DS281/2)

40. The Chairman recalled that the DSB had considered this matter at its meeting on 18 August 2003 and had agreed to revert to it. He drew attention to the communication from Mexico contained in document WT/DS281/2.

41. The representative of Mexico said that at the DSB meeting held on 18 August, the United States had blocked the establishment of a panel. As a result, Mexico, once again, had found itself obliged to request the establishment of a panel. At the present meeting he did not wish to repeat the "catalogue" of violations by the United States and would simply refer to what had been stated by the United States at the previous meeting. Regarding the substance of Mexico's complaint, the United States had failed to mention any of the reasons for which it was still applying anti-dumping duties on cement from Mexico, which should have never been applied. The United States had not explained either why it had rejected Mexico's efforts to reach a mutually satisfactory solution. Instead, the United States had indicated that certain aspects of Mexico's request were not "sufficiently specific to clearly present the matter in question", and had added that Mexico's request did not allow "the legal basis for Mexico's complaint" to be determined. In Mexico's view this statement appeared to be delaying tactics. He, therefore, wished to make two comments in this respect.

42. Regarding the statement that some aspects of Mexico's request were not sufficiently specific because it did not cite paragraphs of the articles violated, he wished to recall that: (i) in the Bananas case, the United States had failed to cite the paragraphs of the Articles in its request for the establishment of a panel, but this had not prevented the procedure from going ahead; (ii) in the Fructose case, the United States had not specified the paragraphs of the articles of the Anti-Dumping Agreement either and had not related its claims to the articles mentioned. Here again, this had not prevented the procedure from going ahead. In addition, the United States had indicated that "it is unable to determine the legal basis for Mexico's complaint". In this connection, it appeared incredible that the United States stated that it "does not recognize our complaint" after: (i) 13 years in which many bilateral meetings had been held at all levels in order to express Mexico's concerns regarding the conduct of the investigation; (ii) eleven administrative reviews in which many claims and

evidence regarding the anti-dumping measures had been presented; (iii) two sunset reviews; (iv) several dispute settlement procedures under the NAFTA; and (v) extensive consultations in which Mexico's claims were explained in detail. In the light of the foregoing, it was difficult to understand how the United States could credibly affirm that the claims had not been presented clearly or that it could not understand the legal basis for this case. To summarize, he said that it was clear that Mexico's request was fully in conformity with Article 6.2 of the DSU. He noted that 13 years had already been enough and it was now time to enter into the substance of the case.

43. The representative of the United States said that his delegation did not wish to repeat the points made at the previous DSB meeting concerning this matter. It continued to be disappointed that Mexico had chosen to pursue this matter further by requesting the establishment of a panel, but remained confident that US law – as such and as applied in the determinations concerning Gray Portland Cement and Clinker from Mexico – would be found to be consistent with the United States' WTO obligations. The United States was also disappointed that Mexico had declined to cure the numerous defects in its panel request, examples of which had been discussed by the United States at the previous DSB meeting. The United States took note of Mexico's statement at the present meeting but continued to believe that Mexico had not complied with the basic requirements of Article 6.2 of the DSU. Regrettably, Mexico had not acted on the suggestion that it refile its panel request. As a result, the United States had to reserve its right to pursue these issues at an appropriate point before the panel. It thus appeared that the resources of the dispute settlement system would be devoted to seeking to enforce Mexico's compliance with Article 6.2. This resource drain was both unfortunate and could have been avoided, inasmuch as the United States had set out its concerns to Mexico at the previous meeting and suggested a way forward for Mexico. In summary, while the United States acknowledged Mexico's right to have a panel adjudicate those claims that it had presented in a proper manner relating to the US antidumping measures on cement, the United States insisted that its rights under Article 6.2 of the DSU be respected. Because Mexico had not respected these rights, the United States could not go along with the establishment of a panel.

44. The representative of Canada said that his country was very closely examining the allegations of Mexico and the procedural issues raised by the United States. Both were very important to Canada. However, on account of the extent and range of these allegations, Canada continued to examine them very closely and would indicate its third-party interest later on in writing.

45. The DSB took note of the statements and agreed to establish a panel in accordance with the provisions of Article 6 of the DSU with standard terms of reference.

46. The representatives of China, EC, Japan and Chinese Taipei reserved their third-party rights to participate in the Panel's proceedings.

5. United States – Anti-dumping measures on oil country tubular goods (OCTG) from Mexico

(a) Request for the establishment of a panel by Mexico (WT/DS282/2)

47. The Chairman recalled that the DSB had considered this matter at its meeting on 18 August 2003 and had agreed to revert to it. He drew attention to the communication from Mexico contained in document WT/DS282/2.

48. The representative of Mexico said that as in the cement case, the United States had blocked the establishment of a panel at the 18 August DSB meeting. Once again, instead of considering the substance of Mexico's complaints, the United States had used delaying tactics that made no sense. Mexico did not intend to repeat what had been stated at the previous DSB meeting and would only refer to the US comment on the alleged lack of clarity in Mexico's request. He wished to refer to Mexico's statement concerning cement regarding what the United States had done in the Bananas and

Fructose cases. As in the cement case, the request for consultations and the questions were fully detailed. Consequently, the United States could not affirm that the claims had not been presented clearly or that it was unable to understand the legal basis for the case. Mexico repeated that its request was fully compatible with Article 6.2 of the DSU. This was why Mexico respectfully requested the United States to abandon its delaying tactics and to move on to consideration of the substance of its violations.

49. The representative of the United States said that it would not repeat the points made at the previous meeting of the DSB concerning this matter. Suffice it to say that, as in the case of the cement dispute, the United States was confident that US law – as such and as applied – would be found to be consistent with its WTO obligations. The United States was also disappointed that Mexico had declined to cure the numerous defects in its panel request, defects that had been discussed at the previous meeting of the DSB and that were similar to those that appeared in Mexico's panel request concerning cement. As with the previous agenda item, the United States had taken note of Mexico's statement, however, the United States continued to believe that Mexico had not complied with the basic requirements of Article 6.2 of the DSU. It regretted that Mexico had not acted on the US suggestion to refile its panel request and, once again, wished to reserve its rights to pursue these issues at an appropriate point before the panel. In conclusion, here too, because Mexico had failed to respect US rights under Article 6.2 of the DSU, the United States could not go along with the establishment of a panel.

50. The representative of Canada said his country had a keen interest in both the substance and the procedural issues that were raised in this dispute. However, on account of the extent and range of the allegations at play, Canada was not in a position to indicate its third-party interest at the present meeting and might do so at a later date.

51. The DSB took note of the statements and agreed to establish a panel in accordance with the provisions of Article 6 of the DSU with standard terms of reference.

52. The representatives of Argentina, China, EC, Japan, Chinese Taipei, and Venezuela reserved their third-party rights to participate in the Panel's proceedings.

6. United States – Countervailing duties on steel plate from Mexico

(a) Request for the establishment of a panel by Mexico (WT/DS280/2)

53. The Chairman recalled that the DSB had considered this matter at its meeting on 18 August 2003 and had agreed to revert to it. He drew attention to the communication from Mexico contained in document WT/DS280/2.

54. The representative of Mexico said that at the DSB meeting held on 18 August, the United States had blocked the establishment of a panel regarding the countervailing duties based on a methodology that had already been rejected by the Appellate Body "as such". Of even more concern was the fact that the United States was cynical enough to state that there was no reason to conduct this procedure because the countervailing duties collected as a result of this investigation had already been paid and to suggest that Mexico should await the review under way before contesting them. This was not only totally absurd, but it was also a violation of the principle of good faith laid down in Article 3.10 of the DSU. This case also showed that the incentives' scheme in the DSU faced a serious problem of effectiveness. Therefore, what the United States was doing in this case amounted to an abuse of the system, and in this particular case to the detriment of Mexico.

55. The representative of the United States said that his country was disappointed that Mexico had decided to make a second request for a panel with respect to a measure which would have no effect six months from now. As the United States had stated at the previous DSB meeting, the 1998

administrative review that was the subject of this panel request would cease to have any effect no later than 26 February 2004. Given this situation, it seemed to the United States that the resources of all involved, including those of the parties, the Secretariat, and the panel that would be established at the present meeting, would be better served if Mexico were to assess the results of the soon-to-be completed administrative review, and determine at that time whether it wished to pursue WTO dispute settlement proceedings. The United States, therefore, hoped that Mexico would reassess its decision to pursue panel proceedings. Finally, on a procedural matter, Mexico stated in its panel request that the measure at issue "includes" the 1998 administrative review final results cited in Mexico's panel request, as well as "the actions that preceded it". Article 6 of the DSU required that Members "identify the specific measures at issue" in a dispute. The United States did not understand what "actions" Mexico might be referencing in this request, in addition to the final results of the administrative review, but considered that the only "specific measure" identified was the final results of the 1998 administrative review.

56. The representative of Mexico said that his country noted the statement made by the United States as to how the resources of the dispute settlement mechanism should be used. He said that the resources of Mexico, the United States, the Secretariat, the panel and third parties could have been saved if the illegal methodology had not again been applied.

57. The representative of Canada said that, as a procedural issue, the United States had noted that it did not consider the words "the actions that preceded it" to constitute a reference to specific measures. Without taking a position whether or not this was the case, that seemed to be at variance with the US position in the Wheat case where the United States had argued and had won that actions did constitute reference to specific measures in accordance with Article 6.2 of the DSU.

58. The DSB took note of the statements and agreed to establish a panel in accordance with the provisions of Article 6 of the DSU with standard terms of reference.

59. The representatives of China, EC and Chinese Taipei reserved their third-party rights to participate in the Panel's proceedings.

7. European Communities – Measures affecting the approval and marketing of biotech products

(a) Request for the establishment of a panel by the United States (WT/DS291/23)

(b) Request for the establishment of a panel by Canada (WT/DS292/17)

(c) Request for the establishment of a panel by Argentina (WT/DS293/17)

60. The Chairman proposed that the three sub-items to which he had just referred be considered together. He recalled that the DSB had considered these matters at its meeting on 18 August 2003 and had agreed to revert to them. First, he drew attention to the communication from the United States contained in document WT/DS291/23.

61. The representative of the United States said that, as explained at the DSB meeting held on 18 August, his country was concerned that the EC and its member States, in implementing EC legislation on the approval of biotech products, had adopted measures that were inconsistent with the EC's WTO obligations. In particular, the EC's moratorium on the approval of biotech products as well as product-specific bans adopted by EC member States appeared inconsistent with various provisions of the WTO Agreement, including provisions of the SPS Agreement. Furthermore, these measures had restricted imports of agricultural and food products from the United States. More broadly, the United States was concerned that the EC's measures, which were not based on science, were hindering the worldwide development and application of agricultural biotechnology. In a world where hunger

and starvation remained a tragic reality for many throughout the developing world, it was essential to take advantage of the benefits of biotechnology in terms of raising farmer productivity, reducing hunger, and improving the environment. Accordingly, the United States made its second request that the DSB establish a panel pursuant to Article 6 of the DSU with standard terms of reference to examine these matters. The United States took note of the panel requests by Canada and Argentina. Assuming those panels were also established, the United States submitted that under Article 9.1 of the DSU, a single panel should be established to consider the matters raised by the United States, Argentina, and Canada.

62. The Chairman drew attention to the communication from Canada contained in document WT/DS292/17.

63. The representative of Canada said that his country's position with respect to this dispute had been amply and clearly set out in the statement made at the 18 August DSB meeting. However, he wished to make a few observations with respect to the statement made by the EC at that meeting. Canada was surprised by the EC's allegation at the previous DSB meeting that Canada was not interested in seeking a satisfactory outcome and was not interested in doing so during the consultations. Not only had Canada participated in good faith in the consultations with a view to resolving this dispute; Canada had spent the past five years trying to engage the EC to resolve this issue. Unfortunately, despite repeated assurances from all levels of the EC that the moratorium would be lifted, Canada had only seen continued delays. This panel request was a last resort to address measures that were inconsistent with the EC's obligations under the WTO. Canada agreed with the EC that WTO Members had the right to establish their own level of protection to address risks. However, this dispute was not about levels of protection or risks. This dispute was about the EC's failure to apply its own approvals procedure for pending biotech product applications and about bans imposed by EC Member State on products that had already been approved as safe by the EC.

64. He said that Canada agreed that a single panel should be established to consider the matters raised by Canada, the United States, and Argentina in this dispute. Canada noted that there were differences in the panel requests made by Canada, the United States, and Argentina. Canada considered, however, that these differences could be accommodated in the context of a single panel without prejudice to the rights of the parties involved, as envisaged in Article 9.2 of the DSU. Canada reserved its right, under Article 9.2 of the DSU, to request a separate panel report, if necessary.

65. The Chairman drew attention to the communication from Argentina contained in document WT/DS293/17.

66. The representative of Argentina said that, at the 18 August 2003 DSB meeting, Argentina had requested the establishment of a panel in accordance with the terms of the request contained in document WT/DS293/17 concerning actions and measures adopted by the EC that affected the approval and marketing of agricultural biotechnology products. It merely wished to add that, as there had been no further developments since then, which might indicate the possibility of a settlement to this dispute, Argentina was requesting the establishment of a panel for the second time. In this connection, and taking into account the requests by other Members relating to the same matter, his country considered appropriate that a single panel be established under Article 9.1 of the DSU.

67. The representative of the European Communities said that he wished to express the EC's regret with regard to the reiteration of panel requests by Argentina, Canada and the United States. As had been explained when these requests were first discussed a few days ago, the approval of genetically-modified organisms and genetically-modified food was perfectly possible in the EC. A number of applications were being examined at present, and decisions on pending applications would be taken within a reasonable time-frame in accordance with the relevant procedures. However, it would appear that the complainants had regarded the consultations stage as a purely formal step, necessary to proceed to request the establishment of a panel, rather than as a meaningful dialogue

aimed at resolving the dispute, as required by the DSU rules. The EC was disappointed by this non-constructive attitude, but would vigorously defend its interest in this dispute. He said that the EC was agreeable to the single panel approach.

68. The representative of Mexico said that his delegation wished to continue to examine the panel requests and would indicate its intention to participate as a third party in this case.

69. The DSB took note of the statements and agreed to establish a single panel pursuant to Article 9.1 of the DSU, with standard terms of reference.

70. The representatives of Australia, China, Chile, Colombia, El Salvador, Honduras, New Zealand, Norway, Peru, Chinese Taipei, Thailand, and Uruguay reserved their third-party rights to participate in the Panel's proceedings.

8. European Communities – Protection of trademarks and geographical indications for agricultural products and foodstuffs

(a) Request for the establishment of a panel by the United States (WT/DS174/20)

(b) Request for the establishment of a panel by Australia (WT/DS290/18)

71. The Chairman proposed that the two sub-items to which he had just referred be considered together. First, he drew attention to the communication from the United States contained in document WT/DS174/20.

72. The representative of the United States said that his country had had serious concerns for many years regarding the EC's Regulation 2081/92, which governed the protection of geographical indications for agricultural products and foodstuffs. Among other things, Regulation 2081/92 did not allow the registration of non-EC GIs unless the GI was from a country that offered GI protection that was equivalent to that of the EC. This "reciprocity requirement" appeared to be inconsistent with the national treatment or MFN obligations of the TRIPS Agreement and the GATT. Nor did Regulation 2081/92 provide the legal means for foreign nationals to prevent the misleading use of their GIs. This also appeared inconsistent with the EC's national treatment and MFN obligations under TRIPS and the GATT 1994. Simply put, when it came to the protection of GIs, the EC did not treat foreign nationals and products originating outside the EC the same as its own nationals and products. Regulation 2081/92 also diminished the value of foreign trademarks by not allowing trademark owners to assert their rights to protect their trademarks against confusing use. This appeared inconsistent with Article 16 of the TRIPS Agreement. Article 16 required the EC to provide trademark owners the exclusive right to prevent unauthorized use of identical or similar signs, where such use would result in a likelihood of confusion. The United States had held numerous consultations with the EC since 1 June 1999, when it had first requested WTO dispute settlement consultations. The EC had yet to address its concerns. Accordingly, at this juncture, the EC had left the United States no choice, but to request that the DSB establish a panel pursuant to Article 6 of the DSU with standard terms of reference to examine these matters.

73. The Chairman drew attention to the communication from Australia contained in document WT/DS290/18.

74. The representative of Australia said that his country was seeking the establishment of a panel to consider its concerns regarding the EC's regime for the registration and protection of geographical indications for agricultural products and foodstuffs. The details of Australia's request were set out in WT/DS290/18. As confirmed in a public statement released in Brussels on 28 August 2003, the EC was seeking through a three-pronged approach in the Doha negotiations to fundamentally re-write the TRIPS Agreement's provisions on IPR's. This, despite the fact that for many WTO Members the

current provisions of the Uruguay Round Agreement were yet to enter into force and the EC itself had failed to implement its existing obligations. In Australia's view, the EC regime was inconsistent with WTO rules prohibiting discriminatory treatment, did not give due protection to trademarks, and was overly complex and prescriptive. The EC's regime diminished the legal protection for trademarks under the TRIPS Agreement. Among other difficulties for trademark owners under the EC regime, they had no right to prevent the registration and confusing use of a similar sign, thereby potentially significantly diminishing the value of the trademark. However, the problems that existed with the EC's GI regime did not relate only to trademarks. If a third country wished to protect even one GI under the EC's regime, it had to agree to register, and to protect, at the same level as in the EC, over 600 EC products. Even then, the third country GI could not be registered under the EC's regime unless the third country offered guarantees that its GI registration system was identical or equivalent to the EC's system. In other words, the EC was stating that its system was the way the rest of the world had to do it. And it was precisely this objective; i.e. to force all Members of the WTO to adopt its burdensome, convoluted and bureaucratic system – that the EC had embarked upon in the Doha negotiations. The EC was in fact asserting the exclusivity of the EC's system of law. Quite simply such a requirement was not in keeping with any of the covered agreements. In accordance with Australia's rights under the DSU and the other covered agreements, Australia requested the establishment of a panel to examine its claims.

75. The representative of the European Communities said that the EC deeply regretted this initiative by the United States and Australia to request the establishment of a panel with respect to EC Regulation 2081/92 on the protection of geographical indications for agricultural products and foodstuffs. The EC considered that Regulation 2081/92 was fully compatible with WTO rules and accordingly would reject this first request for the establishment of a panel. Considering the subject matter (geographical indications) and the timing of the request, on the eve of Cancun, it was difficult not to see an attempt to hamper the Doha negotiations on geographical indications for agricultural products. If the United States and Australia remained committed to pursuing this regrettable action, the EC would vigorously defend its interests and those of all WTO Members who wished to see a correct interpretation of the WTO provisions on geographical indications. The US request had failed to meet the minimum requirements of Article 6.2 of the DSU, which provided that the request had to "identify the specific measures at issue and provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly". Regulation 2081/92 was a complex piece of legislation consisting of numerous provisions imposing many distinct legal requirements. The US request did not specify which aspects of Regulation 2081/92 it considered to be inconsistent with each of the numerous provisions of the WTO Agreement (no less than 19!) that it cited. As a result, the US request failed to "present the problem clearly" and did not achieve the purpose of providing adequate notice to the EC. Indeed, at this stage, and after two rounds of consultations, the subject of the US complaint remained most unclear. The EC recalled that in a recent case ("Canada – Wheat Board") the panel request made by the United States had been found by the Panel to be inadequate on similar grounds. In order to avoid similar problems in this case, the EC would invite the United States to submit a new panel request in which its legal claims were properly stated in accordance with the requirements of Article 6.2 of the DSU. Although Australia's panel request was somewhat more specific, it failed also to present the problem clearly. The EC therefore would extend to Australia the invitation to submit a new panel request where its legal claims would be properly stated in accordance with Article 6.2 of the DSU. Should the United States or Australia not submit a new panel request which met the requirements of Article 6.2, the EC reserved the right to raise this issue before the panel.

76. The DSB took note of the statements and agreed to revert to these matters.

9. Proposed nomination for the indicative list of governmental and non-governmental panelists (WT/DSB/W/239)

77. The Chairman drew attention to document WT/DSB/W/239 which contained an additional name proposed for inclusion on the indicative list in accordance with Article 8.4 of the DSU. He proposed that the DSB approve the name contained in document WT/DSB/W/239.

78. The DSB so agreed.

10. European Communities – Anti-dumping duties on malleable cast iron tube or pipe fittings from Brazil

(a) Statement by Brazil

79. The representative of Brazil, speaking under Other Business", said that on 18 August 2003 the DSB had adopted the Appellate Body Report and the Panel Report in the above-mentioned case. In its Report the Appellate Body had found that the EC had breached Articles 2.4.2, 6.2, 6.4 and 12.2 of the Anti-Dumping Agreement. In accordance with Article 21.3 of the DSU the EC had now an obligation to inform the DSB of its intentions in respect of the implementation of the DSB's recommendations and rulings at a DSB meeting held within 30 days after the date of adoption of the Reports. In view of the fact that the EC had decided not to inform the DSB of its intentions at the present meeting and no other regular meeting was scheduled until 30 days had elapsed, Brazil wished to know when and how the EC intended to comply with Article 21.3 of the DSU.

80. The representative of the European Communities said that the EC understood the impatience of Brazil, but noted that Article 21.3 of the DSU specified 30 days for notification of intentions. Thus far only 11 days had elapsed and a lot of time was still left. He wished to assure Brazil and other Members that the EC would meet its obligations under Article 21.3 of the DSU in relation to this case.

81. The DSB took note of the statements.